

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2017

Coram

The Hon'ble Mr. Justice P.N. Prakash

Writ Petition Nos. 6730 and 6731 of 2003  
and

W.P.M.P. Nos. 8675 and 8676 of 2003

The Management of Shrivari Cargo  
Pvt. Ltd.,  
rep. by its Managing Director  
30, 27 Street, Thillai Ganga Nagar,  
Nanganallur, Chennai - 600 061. ...Petitioner in both W.Ps.

Vs.

1. The Presiding Officer,  
I Additional Labour Court,  
High Court, Campus, Chennai.
2. Vijayasathya ...Respondents 1 and 2 in both W.Ps.

Prayer in W.P.No.6730 of 2003

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records relating to the impugned order, dated 20.03.2002, made in I.A.No.98 of 2001, in C.P.No.625 of 1999 from the first respondent and to quash the same and to direct the first respondent to give an opportunity to plead his case in C.P.No.625 of 1999.

Prayer in W.P.No.6731 of 2003

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records from the first respondent relating to the impugned order, dated 02.08.2001 in C.P.No.625 of 1999 and to quash the same.  
In both W.Ps.

For Petitioner : Mr. Balan Haridas

First Respondent : Labour Court  
For Respondent-2 : No appearance

COMMON ORDER

Since the issue involved, relief sought for, in both the Writ Petitions are interconnected, and the parties are one

and the same, they have been taken up together and disposed of vide this common order.

2. The petitioner, viz., M/s Shrivari Cargo Pvt. Ltd., shall be hereinafter referred to as the Management for the understanding and brevity.

3. Heard Mr. Balan Haridas, learned counsel appearing for the Management. Insofar as the second respondent, viz., Vijayasathya/employee is concerned, it is seen that though notice was served on him, and an Advocate, by name, Mr. M. Ramesh, undertook to enter appearance for him, it appears that the said counsel did not file vakalat for the second respondent. Therefore, Registry was directed to print the name of the second respondent in the causelist while listing the case, and accordingly, his name was being printed in the causelist from 21.01.2011 onwards. Today also, when the matter is taken up for hearing, there is no representation for the second respondent, even though his name is printed in the causelist and was called thrice by the Office Assistant. Hence, this Court is not inclined to show any more indulgence, and proceeds to dispose of these Writ Petitions based on the materials available on record.

4. It is the case of the second respondent that he was appointed as Manager in the Management on 01.11.1997 on a monthly salary of Rs.8000/-. According to him, though he was appointed as Manager, he was not given Managerial Powers, and was treated only as a Clerk, and therefore, he was forced to resign his job on 01.03.1999, which was also accepted by the Management on 10.03.1999. It is the grievance of the second respondent that though his salary was fixed at Rs.8000/- he was not paid the full salary, and he was paid Rs.3,750/- per month. Therefore, he filed a Claim Petition under Section 33 C of the Industrial Disputes Act, 1947, (for short, as 'I.D. Act') before I Additional Labour Court, Chennai, in C.P.No.625 of 1999, claiming a total sum of Rs.1,16,600/-. On receipt of notice from the Labour Court, the Management entered appearance and filed their counter statement, refuting the allegations made in the Claim Petition.

5. During trial, the second respondent examined himself as P.W.1, and marked 19 exhibits. He was not cross-examined by the Management, nor any documents were marked on the side of the Management. Therefore, the Labour Court passed an order, dated 02.08.2001, directing the Management to pay a sum of Rs.1,00,066.72 to the second respondent herein. Challenging which, the Management has filed the present Writ Petition, viz., W.P.No.6731 of 2003. After the order was passed, the

Management filed an Interlocutory Application before the Labour Court, in I.A.No.98 of 2001 in C.P.No.625 of 1999 to set aside the order, dated 02.08.2001, which was dismissed by the Labour Court on 20.03.2002. Challenging which, W.P.No.6730 of 2003 has been filed by the Management.

6. Now, the issue, which falls for consideration herein, is as to whether the second respondent has proved his claim before the Labour Court satisfactorily.

7. Even according to the second respondent, his wife Jayanthi Sarathi was one of the Directors of the Company, and that she had difference of opinion with Kalavathi Selvarajan, who is the Managing Director of the same Company. Therefore, it is contended that he was victimized by the Management, and thereafter, forced to resign his job. It is pertinent to mention here that the second respondent has not challenged his resignation. In other words, he had not stated that he was illegally terminated from service. It is his unequivocal admission that he had voluntarily resigned his job. Exhibit P.1, is the appointment order of the second respondent, dated 15.10.1997, and Ex.P.2 is the resignation letter, dated 01.03.1999. As per Ex.P.1, the petitioner was appointed as Manager on a monthly salary of Rs.8,000/- . Therefore, he cannot fall within the definition of the word 'Workman', as defined under Section 2 (3) of the I.D. Act. However, it is trite law that, mere definition as 'Manager' will not dis entitle a person to claim the benefit of a workman. If the workman is able to adduce satisfactory evidence before the Labour Court that though he was designated as Manager, he was not given any managerial powers, then, the claim of an employee under Section 33-c I.D.Act is maintainable. In this connection, it would be beneficial to quote the contents of the resignation letter given by the second respondent, marked as Ex.P.2, dated 01.03.1999, which is reproduced hereunder:-

" I thank you for the opportunity given to me to serve your Organization. I am resignation from the services for personal reasons and would request you to please relieve me with immediate effect and arrange to settle my dues.

Thanking you,

Yours faithfully"

8. The second respondent, after having said so, in his resignation letter, for the first time, he had taken a plea before the Labour Court that he was not paid Rs.8,000/- per month, and that he had not discharged duty as that of a Manager. Except, the ipse dixit of the second respondent, there is no

other material, worth its salt to show that he was not treated as Manager but as a clerk. At this juncture, one should remember that the wife of the second respondent, by name Jayanthi was one of the Directors in the Company, where, the petitioner worked, and it is too big a pill to swallow the assertion of the second respondent that under the very nose of his wife, he was being treated as a workman (Clerk) by the Managing Director, Kalavathi Selvarajan.

9. Therefore, in the considered opinion of this Court, merely because, he has not been cross-examined by the Management, it does not mean that whatever he has stated in the chief should be accepted as gospel truth. It is for the Court to apply its rich wisdom and appraise the available ex parte evidence and only thereafter proceed to accept the same if it inspires the judicial confidence of the Court.

10. On a reading of the evidence of the second respondent and the attending facts and circumstances, this Court is not able to believe his version that though he was appointed as Manager, he was being treated as Clerk and that he was not paid full salary of Rs.8,000/-. Therefore, this Court is of the view that the Labour Court has proceeded to accept the improbable assertion of the second respondent, and has allowed his claim in part.

11. For the reasons stated hereinabove, Writ Petition No.6731 of 2003 is allowed and the impugned order passed by the Labour Court in C.P.No.625 of 1999, dated 02.08.2001, is set aside. Since W.P.No.6731 of 2003, is allowed, it may not be necessary to pass separate orders in W.P.No.6730 of 2003, as it is the outcome of the order passed in C.P.No.625 of 1999. Accordingly, W.P.No.6730 of 2003 is closed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

sd

Sub Assistant Registrar

To

I Additional Labour Court/Presiding Officer  
High Court, Campus, Chennai.

1cc to Mr.Balan Haridas, Advocate, S.R.No.426

SSI (CO)

RS(08/02/2017)

Writ Petition Nos.6730